

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Executive Summary Five-Year Review for Rule R313-26 March 10, 2016

<b>What is the issue before the Board?</b>	Rule R313-26 of the Utah Administrative Code is up for a five-year review. If this rule is to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review.
<b>What is the historical background or context for this issue?</b>	<p>The Utah Administrative Rulemaking Act (Utah Code Annotated (UCA) §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority or are otherwise unnecessary.</p> <p>The Radiation Control Act authorizes the Waste Management and Radiation Control Board to make rules governing the generator site access permit program (UCA §19-3-106.4(3)). Because the Administrative Rulemaking Act's definition of "agency" includes each state board authorized or required by law to make rules, it is appropriate that the Board approve the five-year review of a rule.</p> <p>To retain a rule as part of the Utah Administrative Code, a "Five-Year Notice of Review and Statement of Continuation" must be filed with the Division of Administrative Rules, before the rule's five-year anniversary date. A filing form with the following information must be provided:</p> <ol style="list-style-type: none"><li>1. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule;</li><li>2. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and,</li><li>3. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.</li></ol> <p>Completing the form provided by the Division of Administrative Rules and filing it before the five-year review date satisfies the provisions of the Administrative Rulemaking Act with respect to a five-year review.</p>
<b>What is the governing statutory or regulatory citation?</b>	Utah Code Annotated (UCA) §63G-3-305 and Utah Code Annotated §19-3-106.4
<b>Is Board action required?</b>	Yes.

<b>What is the Division Director's recommendation?</b>	<p>The Division Director recommends the Board approve filing the completed Five-Year Notice of Review and Statement of Continuation forms for R313-26 with the Division of Administrative Rules.</p>
<b>Where can more information be obtained?</b>	<p>For further information, please contact Rusty Lundberg at (801) 536-4257 or Ralph Bohn at (801) 536-0212.</p>

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Information</b>	
DAR file no:	Date filed:
State Admin Rule Filing Key: 157262	
Utah Admin. Code ref. (R no.): R313-26	
<b>Agency Information</b>	
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation
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Building:	
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Remove:	
(Interested persons may inspect this filing at the above address or at DAR during business hours)	
<b>Rule Title</b>	
2. Title of rule or section (catchline):	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities
<b>Rule Provisions</b>	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:	Section 19-3-104 provides the Radiation Control Board authority to make rules to protect the public and environment from sources of radiation. Section 19-3-106.4 requires a generator or waste collector (Broker) of Low-level radioactive waste to obtain a site access permit prior to transferring or shipping waste to a commercial radioactive waste treatment or disposal facility located in Utah. The purpose of this rule is to establish criteria and terms and conditions upon which the Executive Secretary issues permits to generators accessing a land disposal facility located within the state.
<b>Comment Summary</b>	
4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:	The rule has had two proposed changes that have been published for public comment. One received no comments. The other received one comment which is summarized as follows: Some of the proposed changes may over reach the intent of H.B. 124 (2013 session) and place the State in a position for potential litigation. The rule change was withdrawn.
<b>Justification Information</b>	
5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:	It is necessary to continue this rule because it establishes the requirements and conditions for issuing a site access permit to generators or brokers. Once a permit is issued, it allows them to ship waste to a commercial radioactive waste facility in Utah. The rule also provides regulation for compliance inspections of shipments.
<b>Indexing Information</b>	
6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):	radioactive waste, generator permit
<b>File Information</b>	
7. Attach an RTF document containing the text of this rule change (filename):	There is a document associated with this rule filing.
<b>To the Agency</b>	
Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for	

completion, possibly delaying the effective date.		
Agency Authorization		
Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 02/17/2016

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157262>

2/17/2016

### **R313. Environmental Quality, Radiation Control.**

#### **R313-26. Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities.**

##### **R313-26-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe the requirements for the issuance of permits to generators for accessing a land disposal facility located within the State and requirements for shippers.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-26 are in addition to, and not in substitution for, other applicable requirements of these rules.

##### **R313-26-2. Definitions.**

As used in Rule R313-26, the following definitions apply:

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Generator Site Access Permit" means an authorization to deliver radioactive wastes to a land disposal facility located within the State of Utah.

"Land disposal facility" has the same meaning as that given in Section R313-25-2.

"Manifest" means the document, as defined in Appendix G of 10 CFR 20.1001 to 20.2402 (2006), used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

"Packager" means Waste Processor, Waste Collector or Waste Generator as defined in Section R313-26-2.

"Radioactive waste" means any material that contains radioactivity or is radioactively contaminated and is intended for ultimate disposal at a licensed land disposal facility in Utah.

"Shipper" means the person who offers radioactive waste for transportation, typically consigning this type of waste to a land disposal facility.

"Waste Collector," "Waste Generator," and "Waste Processor" has the meaning as defined in Appendix G of 10 CFR 20.1001 to 20.2402 (2006).

##### **R313-26-3. Generator Site Access Permits.**

A Waste Generator, Waste Collector, or Waste Processor shall obtain a Generator Site Access Permit from the Director before transferring radioactive waste to a land disposal facility in Utah.

(1) Generator Site Access Permit applications shall be filed on a form prescribed by the Director.

(2) Applications shall be received by the Director at least 30 days prior to any shipments being delivered to a land disposal facility in Utah.

(3) Each Generator Site Access Permit application shall include a certification to the Director that the shipper shall comply with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions of the land disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

(4) Generator Site Access Permit fees shall be assessed annually by the Director based on the following classifications:

(a) Waste Generators shipping more than 1000 cubic feet of radioactive waste annually to a land disposal facility in Utah.

(b) Waste Generators shipping 1000 cubic feet or less of radioactive waste annually to a land disposal facility in Utah.

(c) Waste Collectors or Waste Processors shipping radioactive waste to a land disposal facility in Utah.

(5) Generator Site Access Permits shall be valid for a maximum of one year from the date of issuance. The Director may modify individual Generator Site Access Permit terms and prorate the annual fees accordingly for administrative purposes.

(6) Generator Site Access Permits may be renewed by filing a new application with the Director. To ensure timely renewal, generators and brokers shall submit applications, for Generator Site Access Permit renewal, a minimum of 30 days prior to the expiration date of their Generator Site Access Permit.

(7) Generator Site Access Permit fees are not refundable.

(8) Transfer of a Generator Site Access Permit shall be approved by the Director.

(9) The number of Generator Site Access Permits required by each generator shall be determined by the following requirements:

(a) Generators who own multiple facilities within the same state may apply for one Generator Site Access Permit, provided the same contact person within the generator's company shall be responsible for responding to the Director for matters pertaining to the waste shipments.

(b) Facilities which are owned by the same generator and located in different states shall obtain separate Generator Site Access Permits.

(c) Persons who both generate and are either a Waste Processor or Waste Collector shall obtain separate Generator Site Access Permits.

#### **R313-26-4. Shipper's Requirements.**

(1) The shipper shall provide on demand the Director a copy of the Nuclear Regulatory Commission's "Uniform Low Level Radioactive Waste Manifest" for shipments consigned for disposal within Utah.

(2) The appropriate Generator Site Access Permit number(s) shall be documented on the manifest.

(3) Waste Generators, Waste Processors and Waste Collectors shall ensure that all Generator Site Access Permits are current prior to shipment of waste to a land disposal facility located in the state of Utah, and that the waste will arrive at the land disposal facility prior to the expiration date of the Generator Site Access Permits.

(4) A Waste Collector, Waste Processor or Waste Generator shall ensure all radioactive waste contained within a shipment for disposal at a land disposal facility in the state is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility.

(5) The shipper shall ensure waste material is contained where no release of material can occur under conditions normally incident to transportation and shall utilize waste container(s)/package(s) where containment integrity has not been compromised.

#### **R313-26-5. Land Disposal Facility Licensee Requirements.**

The land disposal facility licensee shall ensure that Waste Generators, Waste Collectors and Waste Processors have a current, unencumbered Generator Site Access Permit prior to accepting a Waste Generator's, Waste Collector's or Waste Processor's waste.

#### **R313-26-6. Enforcement.**

Generator Site Access Permittees shall be subject to the provisions of Rule R313-14 for violations of federal regulations, state rules or requirements in the current land disposal facility operating license regarding radioactive waste packaging, transportation, labeling, notification, classification, marking, manifesting or description.

**KEY: radioactive waste generator permit**

**Date of Enactment or Last Substantive Amendment: September 22, 2011**

**Notice of Continuation: April 6, 2011**

